

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	<b>:</b>	<b>CRIMINAL NO. 05-</b>
<b>v.</b>	<b>:</b>	<b>DATE FILED:</b>
<b>BRIAN GALLANTE</b>	<b>:</b>	<b>VIOLATION: 18 U.S.C. § 371</b>
<b>JOHN D'AURIA</b>	<b>:</b>	<b>(conspiracy to defraud the</b>
	<b>:</b>	<b>United States- 1 count)</b>

**INFORMATION**

**COUNT ONE**

**THE UNITED STATES ATTORNEY CHARGES THAT:**

At all times relevant to this Information:

**INDIVIDUALS AND ENTITIES**

1. Philadelphia Seafood, Inc. ("Philadelphia Seafood"), was a Pennsylvania corporation incorporated at 2602 S. Marshall Street, Philadelphia, PA in 1997. Its principle place of business became 1534 Packer Street, second floor, Philadelphia, PA. It operated from approximately 1997 through late 2000 or early 2001. Philadelphia Seafood was in the business of being a wholesale distributor of fish and seafood to restaurants and food stores.

2. Ocean Fresh Seafood, Inc. ("Ocean Fresh"), was a Pennsylvania corporation incorporated at 2619 Dudley Street, Philadelphia, PA in 2000. Its principle place of business became 1534 Packer Street, second floor, Philadelphia, PA. It continued to operate into approximately March, 2003. Ocean Fresh was in the business of being a wholesale distributor of fish and seafood to restaurants and food stores.

3. Defendant BRIAN GALLANTE served as the Chief Executive Officer and 50% owner and operator of Philadelphia Seafood, and as the Vice-President and 50% owner and operator of Ocean Fresh.

4. Defendant JOHN D'AURIA served as the Secretary, Treasurer and 50% owner and operator of Philadelphia Seafood, and as the Chief Executive Officer, Secretary, Treasurer and 50% owner and operator of Ocean Fresh.

5. The Internal Revenue Service ("IRS") was an agency of the United States Department of Treasury, a department or agency of the United States of America.

#### THE CONSPIRACY

6. From in or about January 1998 through in or about April 2003 in the Eastern District of Pennsylvania and elsewhere, defendants

#### **BRIAN GALLANTE and JOHN D'AURIA**

willfully conspired and agreed, together and with each other, to defraud the United States by impeding, impairing, obstructing, and defeating the lawful governmental functions of the IRS in the ascertainment, computation, assessment, and collection of income taxes, under the circumstances and by the means and methods set forth in this count.

#### MEANS AND METHODS

7. It was part of the conspiracy that in or about January 1998 through in or about April 2003 defendants BRIAN GALLANTE and JOHN D'AURIA agreed with each other to conceal from the IRS the true earnings of themselves and their employees at Philadelphia Seafood and Ocean Fresh.

It was further part of the conspiracy that:

8. For the tax years 1998 through 2002, defendant BRIAN GALLANTE did not file any IRS Forms 1040 regarding his own individual income tax liability.

9. For the tax years 1998 through 2002, defendant JOHN D'AURIA did not file any IRS Forms 1040 regarding his own individual tax liability.

10. For the tax years 1998 through 2002, defendants BRIAN GALLANTE and JOHN D'AURIA did not file any IRS Forms 1120 for the corporate tax liability of either Philadelphia Seafood or Ocean Fresh. Further, defendants GALLANTE and D'AURIA did not file any IRS Forms W-2 regarding themselves or their employees.

11. From in or about January 1998 through in or about December 2002, defendants BRIAN GALLANTE and JOHN D'AURIA extensively used cash when conducting their business, so as to render it more difficult to calculate and trace their taxable income. Specifically, defendants GALLANTE and D'AURIA typically received payments from customers of Philadelphia Seafood and Ocean Fresh in the form of checks. Significant amounts of these receipts were deposited into business bank accounts maintained by defendants GALLANTE and D'AURIA and then converted to cash, either by cashing corporate checks at check cashing agencies or by writing corporate checks to cash. Defendants GALLANTE and D'AURIA then used this cash to pay their own salaries, the salaries of their employees, their suppliers, and other business expenses.

12. From in or about January 1998 through in or about December 2001, defendants BRIAN GALLANTE and JOHN D'AURIA paid themselves each about \$20,000 each year in cash salaries, which they did not report to the IRS. During this same time period,

defendants GALLANTE and D'AURIA also paid their secretary, J.G., an individual known to the U.S. Attorney, approximately \$15,000 each year in a cash salary, which she did not report to the IRS, and also paid their assistant, T.T., an individual known to the U.S. Attorney, approximately \$40,000 each year in cash salary, which he did not report to the IRS.

13. From in or about January 2002 through in or about December 2002, defendants BRIAN GALLANTE and JOHN D'AURIA paid themselves each about \$40,000 in cash salaries, which they did not report to the IRS.

#### OVERT ACTS

In furtherance of the conspiracy, and to accomplish its objects, defendants BRIAN GALLANTE and JOHN D'AURIA committed the following overt acts, among others, in the Eastern District of Pennsylvania:

1. From in or about January 1998 through in or about December 2001, defendants BRIAN GALLANTE and JOHN D'AURIA advised their employees that their wages would be paid in cash, "under the table."

2. From in or about January 1998 through in or about December 2002, defendants BRIAN GALLANTE and JOHN D'AURIA paid themselves and their employees cash wages on an approximately weekly basis, from which federal taxes had not been withheld, and which were never reported to the IRS on any tax return.

3. From in or about January 1998 through in or about December 2002, defendants BRIAN GALLANTE and JOHN D'AURIA maintained corporate checking accounts in the names of Philadelphia Seafood and/or Ocean Fresh at Commerce Bank, Pennsylvania Savings Bank, PNC Bank, and Hudson United Bank.

4. From in or about January 1998 through in or about December 2002, defendants BRIAN GALLANTE and JOHN D'AURIA routinely wrote checks from the corporate bank accounts described in paragraph 3 above. These checks were made either payable to cash and then converted to cash, or made payable to Philadelphia Seafood or Ocean Fresh, and then cashed at various check cashing establishments. Defendants GALLANTE and D'AURIA then used the cash to pay their own salaries, the salaries of their employees, and their business expenses. Each conversion of a check to cash is alleged as an overt act of the conspiracy.

5. On or about March 11, 2003, defendants BRIAN GALLANTE and JOHN D'AURIA maintained at their principle place of business, 1534 Packer Street, second floor, Philadelphia, PA, extremely poor and incomplete business records regarding the corporate income and expenses of Philadelphia Seafood and Ocean Fresh, and regarding the individual incomes of defendants GALLANTE and D'AURIA and their employees, pertaining to the tax years 1998 through 2002.

All in violation of Title 18, United States Code, Section 371.

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PATRICK L. MEEHAN  
United States Attorney